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Appl. No. 09/879,794
Amdt. dated August 7, 2006
Reply to Office Action of April 6, 2006

PATENT**REMARKS****I. Status of the Claims**

Claims 1-31 are pending.

II. The Office Action

Applicants acknowledge with appreciation that the Office Action dated April 6, 2006 (the "Action"), withdraws the previous rejection of the claims over Tressler, Fennema, and Matz. The Action does, however, reject the claims as obvious under 35 U.S.C. § 103(a) over a newly cited reference, Bear and Bear, HOW TO REPAIR FOOD, Ten Speed Press, Berkeley, California (1998)(hereafter, "Bear"), alone and in combination with previously cited references. Applicants respectfully traverse all the rejections. For the Examiner's convenience, the rejections are addressed below in the order in which they appear in the Action.

A. Rejection of claims 1-16 over Bear

The Action rejects claims 1-16 under 35 U.S.C. § 103(a) as being obvious over Bear. The Action observes that, on page 37, Bear refers to a method for re-crisping "soggy cold cereal," Action, at page 2, and asserts that the only difference between the methods claimed in the instant application and the teachings of Bear is the reference to "bowl life." The Action asserts that it would have been obvious for the crisp cereal of Bear to have an enhanced bowl life. Applicants respectfully traverse, for Bear neither teaches nor suggests the invention as claimed.

The claims under examination recite the step of "contacting said cereal product with substantially pure water or with steam for a time sufficient to hydrate the surface but not sufficient to permit the water or steam to hydrate the interior of said cereal product." See, claim 1. The Action notes that Bear "discloses treating soggy cold cereal" by heating it at 350°F to recrisp it. The Action states that it is "appreciated that the extent of hydration is not mentioned but an ordinary muggy day would not be expect[ed] to fully hydrate the interior of the cereal

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product," Action, at page 2, and contends that Bear therefore meets the recitation of the claims. Bear itself, however, refutes the Action's contention.

The relevant passage of Bear states:

"Somebody left the cold cereal open on the muggiest day of the year and your cereal is limp and soggy. Pour it onto a cookie sheet and bake it for 2 or 3 minutes at 350°."

Bear, at page 37. Bear therefore states that the cereal is both "*limp* and *soggy*." In this context, the word "limp" has the meaning "lacking firm texture, substance, or structure." *See, e.g.,* third definition of "limp" in Merriam Webster's Collegiate Dictionary, Merriam-Webster, Inc., Springfield (10th ed., 1997), at page 676. Cold cereal can only have lost its firm structure if it has been hydrated sufficiently to hydrate the interior, since any area not hydrated would cause the cereal to retain its structure. The word therefore connotes a physical change that is only possible if the interior of the cereal has been hydrated.

Any doubt about this reading of Bear is removed by the fact that Bear also uses the word "soggy." The word "soggy" is defined as "saturated or heavy with water or moisture." *See, Merriam Webster's Collegiate Dictionary, supra*, at page 1117 (for the Examiner's convenience, the cited pages of this Dictionary are enclosed). By the use of the words "limp" and "soggy," the Bear authors plainly indicate that the cereal that is their subject has been hydrated through to its interior, and therefore does not meet the recitation of the claims under examination.

The claimed invention is directed to methods which involve hydrating the surface, but not the interior, of a cereal product. Bear's method relates to cereals which are "limp" and "soggy," and which therefore plainly have been hydrated throughout. Bear's discussion is therefore directed to a method outside of the scope of the claimed invention. The rejection should be reconsidered and, upon reconsideration, withdrawn.

B. Rejection of claims 16-20 over Bear and Matz

The Action rejects claims 16-20 as obvious in light of Bear in combination with the previously cited reference, Matz, FOOD TEXTURE, Avi Publishing Co., Inc., Westport, CT

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(1962) (hereafter, "Matz"). According to the Action, page 85 of Bear teaches recrisping soggy potato chips by placing them in a broiler or in a microwave. The Action states that the method of Bear appears to differ from the invention by the preamble limitation. The Action then cites Matz as stating that "when the moisture content of a substance is reduced to a level insufficient to allow a monomolecular layer, special properties result. The texture is altered, resulting in a friable condition," and states that "one of ordinary skill would expect a rehydrated potato chip would be dried to a point that is less friable." Action, at page 3 (emphasis added). Applicants traverse.

As an initial matter, it is again observed that claim 16 recites "contacting said potato chip or freeze-dried food with water for a time sufficient to hydrate the surface but not sufficient to permit the water or steam to hydrate the interior of said potato chip or freeze-dried food." Thus, potato chips contacted with sufficient moisture to hydrate the interior are not within the scope of the claimed methods. Bear, however, states that its method is directed to recrisping "soggy" chips. As noted in the preceding section, the word "soggy" is defined as "saturated or heavy with water or moisture." See, Merriam Webster's Collegiate Dictionary, *supra*, at page 1117. By the use of the word "soggy," the Bear authors once again plainly indicate that the chip that is their subject has been hydrated through to its interior, and therefore does not meet the recitation of the claims under examination.

This deficiency in Bear is not made up by Matz. The portion of Matz cited by the present Action was also raised in the Office Action dated September 30, 2005, and responded to in the Applicants' Amendment dated February 13, 2006 (the "February 2006 Amendment"). As the Applicants pointed out in the February 2006 Amendment, the passage of Matz quoted by the Action states that reducing the moisture content of a substance below a level sufficient to allow a monomolecular layer results in a friable condition. Matz would therefore lead the person of skill to assume that drying the item back to its original moisture content would undesirably increase, not decrease, the friability of the item, since it would presumably dry the item back below the level of moisture necessary to allow a monomolecular layer. Thus, the hypothesis of the present Action that Matz would lead "one of ordinary skill [to] expect a rehydrated potato chip would be

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dried to a point that is less friable" (emphasis added) relies on a reading that is directly contradicted by the reference and therefore impermissible.

In short, the rejection of claims 16-20 cannot be supported by Bear or Matz, either alone or in combination. The chips of Bear have clearly been hydrated throughout and therefore do not meet the recitation of the claims. Matz does not provide a motivation to modify Bear, since Matz would suggest that drying the soggy chips of Bear would increase, not decrease the friability of the chips. The rejection of the claims over Bear and Matz should be reconsidered and, upon reconsideration, withdrawn.

C. Rejection of claims 21-31 over Bear and Fennema

The Action rejects claims 21-31 in view of Bear in combination with the previously cited reference, Fennema, ed., FOOD CHEMISTRY, Marcel Dekker, Inc., New York, New York (2nd ed, 1985)(hereafter, "Fennema"). According to the Action, "Bear discloses, at page 75, treating nuts in boiling water for 3 minutes to remove the skin. Then the nuts are dried in a towel." Action, at page 3. Fennema is cited as teaching that very low water activity promotes lipid oxidation. The Action asserts that "at a specific level of bound water in foods, one of ordinary skill in the art would expect the shelf life of a shelled nut to be extended because of the protection that water provides to the dried product." Action, at page 4. Applicants traverse.

Claim 21 recites "contacting said nut with water . . . without boiling the nut." The method taught by Bear is therefore clearly outside the scope of the claimed invention. The rejection therefore must rest on the argument that Fennema provides motivation for modifying Bear to contact the nut without boiling it. Fennema does not do so. This portion of Fennema was previously raised in the September 2005 Office Action. As Applicants noted in the February 2006 Amendment, even assuming the Action were correct in assuming that Fennema would motivate a practitioner to add water to a shelled nut "because of the protection that water provides to the dried product", this would not explain why the practitioner would then be motivated to promptly remove that protection by drying the nut back to its original water content, as recited by claim 21. Anyone expecting that a water layer would add protection would

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manifestly then want to maintain that protection by keeping the nut hydrated. The Action's argument therefore would have merit, if at all, only if claim 21 did not contain a drying step, which it does.

As noted above, Bear discloses treating nuts in boiling water for 3 minutes to remove the skin. Action, at page 3. Fennema does not suggest modifying Bear to avoid the boiling step. Bear then teaches towel drying the nuts, a step that Fennema would teach away from since it would reduce the protective effect of hydrating the nut. In short, neither reference teaches the claimed invention alone or in combination, and neither provides a motivation to modify the other to practice the invention as claimed as doing so would destroy the intended effect.

Accordingly, the Fennema and Bear references do not teach or suggest the method of the invention as claimed. The rejection of the claims over the cited references should therefore be reconsidered and upon reconsideration, withdrawn.

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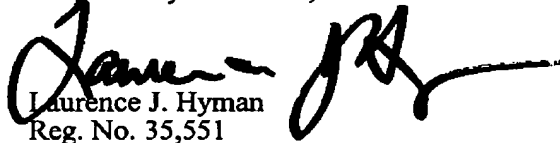
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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,


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